

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEW MEXICO**

NEW MEXICO HEALTH
CONNECTIONS,

Plaintiff,

v.

UNITED STATES DEPARTMENT OF
HEALTH AND HUMAN SERVICES,
et al.,

Defendants.

No. 1:18-cv-00773 JB/KBM

JOINT STATUS REPORT

Plaintiff New Mexico Health Connections (“NMHC”) and Defendants (collectively “HHS”), by and through their undersigned counsel, respectfully file this Joint Status Report pursuant to the Court’s October 9, 2018 Order, ECF No. 25, and state as follows:

1. On the joint motion of the parties, the Court stayed this case pending further proceedings in *New Mexico Health Connections v. U.S. Dep’t of Health & Human Services*, No. 1:16-cv-878 JB/JHR (D.N.M.) (“*NMHC v. HHS I*”), and ordered the parties to file a joint status report to propose a schedule for further proceedings in this case within 14 days of the Court’s ruling on Defendants’ Rule 59(e) motion in *NMHC v. HHS I*. The Court denied Defendants’ Rule 59(e) motion on October 19, 2018. *See* Mem. Op. and Order, *NMHC v. HHS I*, ECF No. 90.

2. Separately, as part of the rulemaking regarding *Adoption of the Methodology for the HHS-Operated Risk Adjustment Program for the 2018 Benefit Year Proposed Rule*, NMHC has submitted a comment to HHS that, among other things, asks HHS to reopen the rulemaking with respect to the 2017 benefit year rule at issue in this litigation. HHS has acknowledged receipt of that request, which remains pending. *See* Ex. A.

3. Because HHS's disposition of NMHC's request could narrow or eliminate the dispute in this case, the parties agree that it would conserve judicial resources to provide HHS an opportunity to respond to NMHC's request before taking further action in this case.

4. Accordingly, the parties respectfully propose that the Court maintain the stay of proceedings in this case and that the parties file a joint status report by January 4, 2019 to provide the Court with additional information regarding the status of NMHC's request and a proposed schedule for further proceedings in this case.

Dated: November 2, 2018

Respectfully submitted,

JOSEPH H. HUNT
Assistant Attorney General

DIANE KELLEHER
Assistant Branch Director

/s/ James Powers

JAMES R. POWERS (TX Bar No. 24092989)

SERENA M. ORLOFF

Trial Attorneys

U.S. Department of Justice,

Civil Division, Federal Programs Branch

1100 L Street, N.W., Room 11218

Washington, D.C. 20005

Telephone: (202) 353-0543

james.r.powers@usdoj.gov

Counsel for Defendants

/s/ Nancy R. Long

Nancy R. Long
LONG, KOMER & ASSOCIATES, PA
2200 Brothers Road/PO Box 5098
Santa Fe, NM 87502
(505) 982-8405
nancy@longkomer.com
email@longkomer.com
vmarco@longkomer.com

Barak A. Bassman
Sara B. Richman
Leah Greenberg Katz
PEPPER HAMILTON LLP
3000 Two Logan Square
Eighteenth and Arch Streets
Philadelphia, PA 19103-2799
215-981-4000
bassmanb@pepperlaw.com
richmans@pepperlaw.com
katzl@pepperlaw.com

Marc D. Machlin
PEPPER HAMILTON LLP
Hamilton Square
600 Fourteenth Street, N.W.
Washington, D.C. 20005-2004
202-220-1200
machlinm@pepperlaw.com

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on November 2, 2018, I caused the foregoing document to be served on counsel for plaintiff by filing with the court's electronic case filing system.

/s/ James Powers

James R. Powers